
(2016) 03 KL CK 0022

In the High Court Of Kerala

Case No : W.P. (C) Nos. 27320 of 2005 (B) and 13202 of 2006-V

N.K. Viswanathan Nair

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 03-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 03 KL CK 0022

Hon'ble Judges : K. Vinod Chandran, J.

Bench : Single Bench

Advocate : K.R.B. Kaimal, Sr. Adv. and B. Unnikrishna Kaimal, Advocate, for the Appellant; Sunitha Vinod, Government Pleader, Mathai M. Paikeday, Sr. Adv., V.A. Muhammed, K.E. Hamza, Rajesh Thomas, K.P. Shahul Hameed and P. Sreekumar, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

K. Vinod Chandran, J.—1. The respective petitioners in the two writ petitions are rival claimants to the post of Head Master, in the respondent aided school. For convenience, WP(C) No. 27320 of 2005 is referred to on status of parties and for facts and documents, unless otherwise specified. The petitioner therein was directed to be suspended by the Deputy Director of Education by Ext. P1 dated 22.03.2005. The suspension was effected by the Manager as per Ext. P3 dated 06.06.2005. The suspension was for the reason of the question paper for the subject Geography being opened long prior to the exam date. The examination was to be conducted on 21.03.2005, but the question papers were opened on 18.03.2005, in the respondent School. The petitioner, at that time a HSA, was the Deputy Chief Superintendent of the Centre and the SSLC examination had to be cancelled.

2. The Deputy Director of Education had also directed initiation of proceedings for misconduct against the petitioner by Ext. P2 dated 30.05.2005. The Manager issued a charge memo by Ext. P3 dated 06.06.2005. An enquiry was conducted;

based on which report, a show-cause notice dated 14.06.2005 was issued at Ext. P5. Following up on Ext. P5, after considering Ext. P6 objections filed by the petitioner, Ext. P7 order dated 20.06.2005 was issued, imposing the punishment of debarring from SSLC Examination for two years and barring of increment for six months, without cumulative effect.

3. The petitioner was then re-appointed as per Ext. P8 dated 21.06.2005 and the petitioner's suspension period was treated as eligible leave. The Manager also sought for the approval of his action, of imposing punishment and regularisation of suspension period from the Deputy Director, through Ext. P9 dated 21.06.2005. The petitioner joined duty on 22.06.2005. The petitioner was also appointed as a Headmaster by Ext. P10 dated 22.06.2005. The appointment of the petitioner as Headmaster was not approved by the District Educational Officer, as is indicated at Ext. P11. The petitioners request to draw salary in the lower post of HSA till his appointment as HM was also declined by the DEO as is evidenced from Ext. P13.

4. While the petitioner was under suspension the additional 6th respondent, who was junior to the petitioner was appointed as Headmaster-in-charge, in the vacancy that arose on 31.05.2005. When the post of Headmaster arose in the School on 31.05.2005, the petitioner, who was the senior most HSA was under suspension and the next in line was one Soumini and the 6th respondent, in that order of seniority. The 6th respondent's immediate senior relinquished her claim. The Manager by Ext. P1 produced in WP(C) No. 13202 of 2005, appointed the 6th respondent as the Headmaster-in-charge, since the other senior had relinquished her claim. The DEO refused to accept the said appointment as Teacher-in-charge on the finding that the 6th respondent was entitled to be appointed regularly to the post of Headmaster of the School. By Ext. P2 dated 27.07.2005(WP(C) No. 13202 of 2006), the DEO rejected the approval of appointment as Teacher-in-charge and directed the Manager to appoint the 6th respondent as the Headmaster itself.

5. The Deputy Director of Education (DDE) issued Ext. P14 dated 03.09.2005, again suspending the petitioner from the date of his reappointment. A further show-cause was issued by the DDE dated 03.09.2005, on the very same misconduct of leakage of question paper, as evidenced by Ext. P15. The DDE, obviously invoked the power under Rule 75A of the KER, finding the punishment imposed to be inadequate and disproportionate to the gravity of the offence. The petitioner filed the above writ petition challenging the vires of the rule and sought for a direction to consider the appeal preferred by the Manager as Ext. P12. On admission this Court stayed Ext. P14 suspension order and Ext. P15 show-cause notice, which stay continues even now.

6. The further facts are evident from WP(C) No. 13202 of 2006, the documents from which are now referred to; but referring to the party status as is already done. By Ext. P3 dated 23.09.2005, the Manager was directed to appoint the 6th respondent as the Head Master. The 6th respondent also filed Ext. P6 dated nil

before the DDE to direct his appointment as HM. The Manager of the School was disqualified by Ext. P7 order dated 15.02.2006. The 6th respondent then filed WP(C) No. 13202 of 2006 claiming declaration of his entitlement to the post of HM and consideration of his appeal Ext. P6 and representation Ext. P8. The 6th respondent also sought for a declaration that, the petitioner was disqualified to be appointed as HM by virtue of Rule 8(1) Chapter III of KER. The said contention was on the ground that the petitioner had been a member of the Managing Committee of the School, which disqualifies him from an appointment in the School.

7. Reverting back to the writ petition of the petitioner, the DDE by Ext. P16, despite the show cause-notice being stayed by this Court, continued the proceedings and after hearing the petitioner; concluded the proceedings. The petitioner does not challenge it but only seeks, by way of a prayer in an IA, in which the order of the DDE is produced as Ext. P16 to finalize the proceedings for approval of his appointment as HM. Ext. P16 imposed the punishment of barring of three annual increments with cumulative effect as per the provisions in Rule 81A of Chapter XIVA KER. The petitioner's suspension was also revoked with effect from 23.09.2005, the date on which this Court stayed the operation of the suspension order, Ext. P14. By Ext. P18, the DDE also directed the DEO to approve the appointment of the petitioner.

8. The petitioner claims that he has to be approved from a prior period, ie: from the date on which he was appointed by the Manager: 22.06.2005. The 6th respondent stakes a claim to the post of Headmaster from 31.05.2005 to his date of retirement on 31.05.2006 in WP (C) No. 13202 of 2006.

9. From the aforesaid facts, it is clear that the petitioner was not available in the School when the Headmaster's post arose on 31.05.2005. The petitioner had been suspended and he was also imposed with a punishment by the Manager. Immediately on his re-instatement, the petitioner was again suspended by the DDE. The petitioner was later taken back into the school, with effect from 23.09.2005. Hence on 22.06.2005, the petitioner was on suspension and the period of suspension was treated as eligible leave. Without challenging Ext. P-16 he cannot raise any claim for approval of his appointment as HM, prior to 23.09.2005.

10. The 6th respondent in his writ petition claims that he ought to have been appointed as Headmaster with effect from 31.05.2005. To that end, the 6th respondent also places reliance on a Division Bench of this Court in Unnikrishnan v. D.E.O., Palakkad [, 1996 (1) KLT 501]. The decision is relied on to challenge Ext. R5(a) produced in WP(C) No. 13202 of 2006, which is not challenged by the 6th respondent in his writ petition. The prayer is seen in the paper book, but no amendment is seen effected to the writ petition. Hence there is no challenge raised against Ext. R5(a).

11. Be that as it may, Ext. R5 (a) is an order of the Government, by which the

petitioner was granted an exemption, to be a member of the Managing Committee of the School under Rule 8 (1) Chapter III KER. Rule 8(1) deals with a prohibition with respect to appointment in a School of any person, who is a Manager or member or other Office bearer of the Managing Body of an educational agency. By the first proviso, it is provided that Managers or members or other Office bearers of the Managing Body working as Teachers, including Headmasters when the Rule came into force, may continue to do so.

12. A reading of the Rule would indicate that there is no prohibition as such for a Teacher to be appointed as a Manager or member or other Office bearer of the Managing Body. The prohibition is quite the contrary, that such a person, who is a part of the Managing Body, cannot be appointed to the School. Presumably by abundant caution, the petitioner before being appointed as a member of the Managing Body, obtained an exemption from Rule 8(1) as per Ext. R5(a), produced in WP(C) No. 13202 of 2006. The Government has such powers under Rule 3 of Chapter I of KER, to dispense with or relax any rule. Without the said relaxation, the prohibition would have operated in so far as the petitioner being not able to claim any further appointment to the School, even to the post of Headmaster, as has been declared in Unnikrishnan [supra]. The petitioner, having obtained relaxation of Rule 8 Chapter III, would not be touched by the rigour of Rules, as to the prohibition from appointment.

13. The order of exemption was dated 06.06.1991 long before the present controversy arose. The petitioner, as was noticed, anticipated the difficulty and got himself exempted from the rule when he was appointed to the Managing Committee. The contention of the 6th respondent, as to the petitioners disability could be addressed, only if the order at Ext. R5 (a) is challenged. It is also to be observed that the power to dispense with and relax operation of any rule is on the satisfaction of the Government and it ill behoves this Court to interfere under Art.226, unless the action is shown to be downright arbitrary. Definitely it cannot be interfered with on the sole ground of an admitted junior having a claim of overtaking the senior; if such exemption had not been granted.

14. The approval of appointment of the petitioner was when the 6th respondent was continuing in the School, ie. from 23.09.2005. The 6th respondent also was aware of Exts. P16 & P18 orders, since they have been produced in WP (C) No. 27320 of 2005. No steps have been taken by the 6th respondent to challenge the orders approving the appointment of the petitioner, before the educational authorities or before this Court.

15. In such circumstance, the appointment of the 6th respondent can only be deemed to be one as Teacher-in-charge between 31.05.2005 and 23.09.2005. The appointment of the petitioner as a Headmaster with effect from 23.09.2005 has acquired finality. The petitioner also having not challenged the orders at Ext. P16, no approval can be granted from a prior date. If the petitioner had a contention that the petitioner had to be appointed as Headmaster prior to the dates specified in Ext. P16, he should have either taken the statutory remedy

under the KER or at least challenged the orders before this Court.

WP(C) No. 27320 of 2005 is unnecessary for reason of the educational authority having passed Exts. P16 & P18 orders. Suffice it to direct the DEO to finalise the approval of the petitioner as directed in Ext. P18. WP(C) No. 13202 of 2006 would stand dismissed. No costs.